

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

AMERICAN TIRE DISTRIBUTORS,  
INC., a Delaware corporation,

Plaintiff,

v.

AMERICAN TIRE CORPORATION,  
unincorporated business with an address  
in El Monte California, ABRAHAM  
HENGYUCIUS, an individual and  
DOES 1 THROUGH 10,

Defendants.

CASE NO.: CV08-2971 MMM

**FINAL CONSENT  
JUDGMENT AND  
PERMANENT INJUNCTION**

This matter comes before the Court on the joint request of the parties for entry of this Final Consent Judgment and Permanent Injunction.

WHEREAS Plaintiff American Tire Distributors, Inc. ("ATD" or "Plaintiff") filed its Complaint on May 6, 2008; and

WHEREAS the Clerk entered default against Defendant American Tire Corporation on July 18, 2008 and against Defendant Hengyucius on August 20, 2008 (collectively "Defendants"); and

WHEREAS Defendants thereafter filed a Motion to Set Aside the Clerk's Entry of Default, which motion was denied by the Court by Order filed and dated March 2, 2009; and

WHEREAS Defendants filed a notice of appeal as to the March 2, 2009 Order; and

1 WHEREAS Defendants consent to and hereby waive any and all objections  
2 to the jurisdiction of this Court; and

3 WHEREAS the parties waive findings of fact and conclusions of law under  
4 Rule 52 of the Federal Rules of Civil Procedure, except as set forth herein; and

5 WHEREAS the parties agree not to attack the validity of this Final Consent  
6 Judgment and Permanent Injunction or any provision thereof in any collateral or  
7 subsequent proceeding; and

8 WHEREAS the parties wish to settle their dispute without admission of  
9 liability on either side; and

10 WHEREAS by stipulation and agreement of the parties, and with the express  
11 consent of the parties, counsel for Plaintiff and counsel for Defendants, as  
12 indicated below, the parties stipulate and agree to the entry of this Final Consent  
13 Judgment and Permanent Injunction; and

14 IT APPEARING TO THE SATISFACTION OF THE COURT, that this  
15 Court has original jurisdiction under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and  
16 1338 and supplemental jurisdiction under 28 U.S.C. §§ 1338(b) and 1367, and  
17 Defendants having consented to personal jurisdiction in this Court, it is hereby  
18 ORDERED, ADJUDGED, and DECREED that Final Judgment is entered in this  
19 case and a permanent injunction is granted as follows:

20 A. Defendants, its agents, servants, employees, representatives, attorneys,  
21 related companies, successors, assigns, and all others in active concert or  
22 participation with the Defendants or any of them, be permanently enjoined and  
23 restrained:

- 24 1. From using AMERICAN TIRE CORPORATION as a  
25 trademark, service mark, trade name, or otherwise, and any  
26 colorable imitation thereof, including but not limited to any  
27 name or mark that includes "AMERICAN TIRE" and any  
28 name or mark confusingly similar to or likely to cause

1 confusion with the AMERICAN TIRE DISTRIBUTORS  
 2 trademark. This provision requires, but is not limited to, the taking  
 3 down of any and all website content using the name AMERICAN  
 4 TIRE CORPORATION (e.g. the content at  
 5 <http://www.americantire.us>) and ceasing issuance of press releases or  
 6 advertisements or other promotional materials using the name  
 7 AMERICAN TIRE CORPORATION. Without limiting the  
 8 foregoing, prohibited names or marks include names or marks that use  
 9 ATD or the term AMERICAN, AMERICA, or abbreviations thereof  
 10 like AMERI with the term TIRE. The parties expressly agree that  
 11 Defendants may use and register the name AMERICAN RUBBER  
 12 CORPORATION;

- 13 2. From representing by any means whatsoever, directly or indirectly,  
 14 that Defendants or any products or services offered by Defendants, are  
 15 associated in any way with Plaintiff or its products or services, and  
 16 from otherwise taking any other action likely to cause confusion,  
 17 mistake, or deception on the part of purchasers or consumers; and
- 18 3. From doing any other acts or things calculated or likely to cause  
 19 confusion or mistake in the mind of the public or to lead purchasers or  
 20 consumers into the belief that Defendants' products or services come  
 21 from or are the products or services of Plaintiff, or are somehow  
 22 sponsored or underwritten by, or affiliated with, Plaintiff, and from  
 23 otherwise unfairly competing with Plaintiff or misappropriating that  
 24 which rightfully belongs to Plaintiff.

25 B. Defendants shall transfer the domain name "AMERICANTIRE.US"  
 26 and all other domain names that include prohibited names or colorably imitate  
 27 Plaintiff's AMERICAN TIRE DISTRIBUTORS mark, to Plaintiff and that  
 28 Defendants be limited to use of a domain name or names that do not use

1 AMERICAN with TIRE, any colorable imitation of the AMERICAN TIRE  
2 DISTRIBUTORS trademark, or any name or mark confusingly similar thereto or  
3 prohibited hereby. Defendants may use domain names that include or are  
4 comprised of the phrase AMERICAN RUBBER CORPORATION.

5 C. Defendants shall amend the records of any Secretary of State offices  
6 to delete any reference to AMERICAN TIRE CORPORATION as a business name  
7 or assumed name and that Defendants be limited to use of a corporate name that  
8 does not use AMERICAN with TIRE, any colorable imitation of the AMERICAN  
9 TIRE DISTRIBUTORS trademark, or any name or mark confusingly similar  
10 thereto or likely to cause confusion with the AMERICAN TIRE DISTRIBUTORS  
11 trademark or prohibited hereby.

12 D. Up to and including ninety (90) days following the entry of this Order,  
13 Defendants shall be allowed to refer to the name "American Tire Corporation" to  
14 collect accounts receivable due and owing to that entity including using the name  
15 "American Tire Corporation" on accounting documents such as past due notices  
16 and may notify entities on its accounts receivable list that American Rubber  
17 Corporation was formerly known as American Tire Corporation. Defendants shall  
18 not use the name "American Tire Corporation" at trade shows, to solicit new  
19 business, in promotional materials of any kind, or on websites.

20 E. Defendants are ordered to file with this Court and to serve on Plaintiff  
21 within thirty (30) days of the entry of this Order and again within one hundred  
22 (100) days of the entry of this Order two reports in writing under oath, setting forth  
23 in detail the manner and form in which Defendants have complied with the  
24 foregoing injunctions.

25 F. Plaintiff agrees that it will not use the entity name AMERICAN TIRE  
26 CORPORATION or the domain name americantire.us until May 31, 2014, at  
27 which time Plaintiff may use that corporate name or domain name in its discretion.  
28 Plaintiff further acknowledges Defendants' concern that in the intervening years or

thereafter a third party may commence use of AMERICAN TIRE CORPORATION in a manner that adversely affects Defendants' business and should any such use come to Plaintiff's attention, Plaintiff agrees to take such action as in its discretion is appropriate to address the issue.

G. The parties agree that any third parties inquiring about the settlement of this case or this Order shall be advised that the case was settled on undisclosed, amicable terms.

H. The parties will bear their own attorneys' fees and costs in connection with this action. However, if either party successfully moves for contempt in connection with any violation of this Order, that party shall be entitled to recover their fees and costs in connection with prosecuting this action to date as well as in connection with the contempt proceeding.

I. This Court shall retain jurisdiction hereof for all purposes, including the purpose of hearing applications and making orders necessary or appropriate relating to this Judgment.

J. This Consent Judgment shall be deemed to have been served on Defendants and all of its officers, directors, agents, employees and attorneys as of the date of entry hereof by the Court and shall become effective immediately. The Clerk of this Court is directed to enter this Final Consent Judgment and Permanent Injunction.

Dated: 07-31-09, 2009.  
Los Angeles, CA

Margaret M. Morrow  
Judge Margaret M. Morrow  
United States District Court

**STIPULATED AND AGREED TO BY:**

**PLAINTIFF AMERICAN TIRE DISTRIBUTORS, INC.**

Dated: June 18, 2009

By: [Signature]  
Name: J. Michael Gaither

Title: *Executive Vice President*

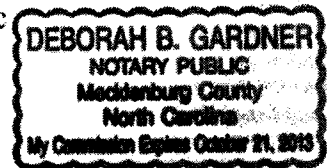
ACKNOWLEDGEMENT OF PLAINTIFF

STATE OF *North Carolina* )  
 ) ss.:  
COUNTY OF *Mecklenburg*

On this 18<sup>th</sup> day of June, 2009, before me personally appeared J. Michael Gaither being by me duly sworn, did depose and say that s/he is the Executive Vice President of AMERICAN TIRE DISTRIBUTORS, INC., the entity referred to in this Order, and acknowledged that s/he executed the foregoing instrument as the act and deed of AMERICAN TIRE DISTRIBUTORS, INC. with full authority to do so.

*Deborah B. Gardner*  
Notary Public

(Notary Seal)



**DEFENDANT AMERICAN TIRE CORPORATION**

Dated: 06-05, 2009 By: *Abraham Heagy*  
Name: Abraham Heagy  
Title: President

ACKNOWLEDGEMENT OF DEFENDANT  
AMERICAN TIRE CORPORATION

STATE OF *California* )  
 ) ss.:  
COUNTY OF *San Bernardino*

On this 5 day of JUNE, 2009, before me personally appeared Abraham Heagy, being by me duly sworn, did depose and say that s/he is the President of AMERICAN TIRE CORPORATION, the entity referred to in this Order, and acknowledged that s/he executed the foregoing instrument as the act and deed of AMERICAN TIRE CORPORATION with full authority to do so.

*Mike Goodey*  
Notary Public MIKE GOODEY

(Notary Seal)



**DEFENDANT ABRAHAM HENGYUCIUS**

BY MY SIGNATURE BELOW, I HEREBY ACKNOWLEDGE THAT I AM AN OWNER OF AMERICAN TIRE CORPORATION AND I ACCEPT AND AGREE TO BE BOUND BY THE PROVISIONS APPLICABLE IN THIS AGREEMENT AS TO MYSELF PERSONALLY AND AS TO AMERICAN TIRE CORPORATION:

Dated: 06-05, 2009

By: [Signature]

Name: Abraham Hengyucius

**ACKNOWLEDGEMENT OF DEFENDANT  
ABRAHAM HENGYUCIUS**

STATE OF California )

) ss.:

COUNTY OF San Bernardino

On this 5 day of June, 2009, before me personally appeared ABRAHAM HENGYUCIUS, being by me duly sworn, did depose and say that he is the individual defendant referred to in this Order, and acknowledged that he duly executed the foregoing instrument on his own behalf.

[Signature]  
Notary Public

Mike Goodey



(Notary Seal)

**APPROVED AS TO FORM BY:**

Dated: June 22, 2009

By: [Signature]

LISA KOBIALKA, Bar No. 191404

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Attorneys for Plaintiff

American Tire Distributors, Inc.

1  
2 Dated: 6/11/09, 2009

By: 

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American Tire Corporation and

Abraham Hengyucius